



State Revolving Fund Loan Program

an Indiana Finance Authority Environmental Program

100 North Senate Avenue, Room 1275
Indianapolis, Indiana 46204
www.srf.in.gov

James P. McGoff
Director of Environmental Programs
(317) 234-2916
jmcgoff@ifa.in.gov

A SUMMARY OF THE NEW EPA DBE RULE AND ITS IMPACT ON SRF LOAN PARTICIPANTS

EPA's New Disadvantaged Business Enterprise (DBE) rule became effective on May 27, 2008. The new DBE rule sets forth an Environmental Protection Agency (EPA) program that serves the compelling government interest of remedying past and current racial discrimination through agency-wide procurement objectives. The new DBE rule revises and replaces EPA's Minority and Women Business Enterprise (MBE/WBE) Program.

The new EPA DBE rule is designed to increase the participation of DBE's in procurements funded by EPA assistance agreements. The key substantive changes that the new EPA DBE rule makes to the MBE/WBE program involve the following: certification of minority & women owned businesses, the six good faith efforts, contract administration requirements, negotiation of fair share goals, recordkeeping & reporting requirements and new requirements for Tribal and insular area fair share negotiations.

Specific changes that may impact the SRF loan participants are outlined below.

- **Certification of MBE/WBE:** In order to be counted as a MBE/WBE under the new EPA DBE rule MBE/WBEs must be certified by a federal agency (e.g., EPA, Small Business Administration, Department of Transportation) or by a State, locality, Indian Tribe, or independent private organization that meets the certification requirements of the new EPA DBE rule. In addition, individuals claiming economic disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

Q: Where can MBE/WBEs get certified in the State of Indiana?

A: MBE/WBEs can get certified with the Indiana Department of Transportation (INDOT). INDOT's certification process meets the requirements of the new EPA DBE rule. The website is www.in.gov/indot/div/legal/dbe. Please identify on the application that you are seeking certification under the new EPA DBE rule. If you have any questions regarding the INDOT website or certification process contact the INDOT Certification Coordinator Lakisha Riley at 317-232-5089.

Q: If my firm is currently on the Indiana Department of Transportation's list of certified DBEs do I need to get re-certified?

A: No, you do not need to get re-certified. INDOT's certification process meets the requirements of the new EPA DBE rule.

Q: Are there entities that INDOT cannot certify? If so, where can those entities go for certification under the new EPA DBE rule?

A: There are entities that INDOT cannot certify. Those entities are: a) Disabled American-owned firms, b) non – profit organizations (private and voluntary organizations controlled by individuals who are socially and economically disadvantaged), and c) those entities who exceed the size standards that are specific to DOT certification process under 49 CFR Part 26. These entities should seek certification through EPA's DBE certification program. The entity may apply to EPA's Office of Small Business Programs (EPA OSBP) for certification as an MBE/WBE. The website is <http://www.epa.gov/osbp/grants.htm>. For questions regarding certification by EPA, please contact Kimberly Patrick, EPA Office of Small Business Programs, at 202-566-2605 or email



Patrick.kimberly@epa.gov. Direct general questions regarding the new EPA DBE rule to Adrienne Callahan, Region 5 MBE/WBE Coordinator, phone number is 312-353-5556 and email callahan.adrienne@epa.gov.

Q: Does the Indiana Department of Administration's (IDOA) certification process use the same certification criteria that EPA is now requiring under the new EPA DBE rule?

A: No. Thus, if you are currently on IDOA's list of MBE/WBEs and you want to bid on SRF projects then you will need to get certified through INDOT in order to be counted as a MBE/WBE under the new EPA DBE rule. Non-certified MBE/WBEs may be used by loan recipients for their procurement needs but those firms cannot be counted toward their MBE/WBE accomplishments. Under the new EPA DBE rule entities can no longer self-certify.

Q: Can individuals having a personal net worth of \$750,000 or more get certified as a DBE under the new EPA rule?

A: No. An individual claiming economic disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

Q: Where can I find a list of MBE/WBEs who have been certified and meet the requirements under the new EPA DBE rule?

A: The INDOT DBE directory can be accessed at: www.in.gov/indot/2576.htm which is located under the "Disadvantaged Business Enterprise and Title VI Resources" link. Those entities that were certified through EPA are posted on the EPA Office of Small Business Program's (OSBP) website. The website is: <http://www.epa.gov/osbp/grants.htm>.

Q: How can I find out more information about certification and the new EPA DBE rule in general?

A: You are encouraged to read the fact sheets located at <http://www.epa.gov/osbp/grants.htm>. You may also contact Doris Roberson at 317-234-1266 or email her at droberso@ifa.in.gov.

- **Six Good Faith Efforts:** The good faith efforts are activities by an SRF loan recipient and its prime contractor to increase DBE awareness of procurement opportunities through race/gender neutral efforts. EPA combined the "Six Positive Efforts" (found at 40 CFR Part 31) with the "Six Affirmative Steps" (found at 40 CFR Part 30) and renamed them the six "good faith efforts" (found at 40 CFR Part 33). The substance of the efforts has not changed.
- **Contract Administration:** The new EPA DBE rule adds additional contract administration requirements that are intended to protect DBE subcontractors. Some of the requirements include provisions intended to ensure that subcontractors receive prompt payment from prime contractors (30 day payment provision). Loan recipients must be notified of DBE subcontractor terminations and prime contractors are required to make good faith efforts if the prime contractor chooses to hire another subcontractor. The rule requires that 3 new forms be filled out by the prime contractor and subcontractor if there are DBE subcontractors involved in a procurement. The loan recipient must ensure that each contract awarded contains the term and condition set forth below.

"Term and Condition: The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

Another new requirement is that loan recipients are now required to create and maintain a bidders list. The list must include all firms that bid or quote on prime contracts or subcontracts, including MBE/WBEs and non-MBE/WBEs. The bidders list must be kept until the project period for the identified loan has ended. The project period is defined as the timeframe that the loan recipient receives SRF funding. The following information must be obtained from all prime and subcontractors: 1) entity's name with point of contact; 2) entity's mailing address, telephone number, and e-mail address; 3) the procurement on which the entity bid or quoted, and when; and 4) entity's status as an MBE/WBE or non-MBE/WBE.

Q: What are the 3 new forms and where can I go to get a copy of the new forms?

A: The 3 new forms are: 1) EPA Form 6100-3 DBE Subcontractor Performance Form (Prime Contractor to provide form to all DBE Subcontractors); 2) EPA Form 6100-2 DBE Subcontractor Participation Form (Prime Contractor will provide form to all DBE Subcontractors); and 3) EPA Form 6100-4 Subcontractor Utilization Form (Each Prime Contractor shall complete this form.)

These forms can be found at <http://www.epa.gov/osbp/grants.htm> under "Forms" or you may call Doris Roberson at 317-234-1266 to obtain a copy.

Q: What is the purpose of the bidders list? And, as a loan recipient must I maintain it? Do I need to also provide a copy to SRF?

A: The purpose of the bidders list is to provide the loan recipient and SRF with a more accurate database of the universe of MBE/WBE and non MBE/WBE prime and subcontractors. As a loan recipient you must maintain the list. You will also provide SRF a copy of the bidders list when you submit your post-bid documentation to Doris Roberson.

- ☐ **Reporting Requirements:** Loan participants, who close loans after the signing of the 2009 EPA Capitalization Grant, will be required to submit their MBE/WBE participation reports on a semiannual basis to Doris Roberson. All loan participants who closed loans prior to the signing of the 2009 EPA Capitalization Grant will continue to report on a quarterly basis. Only certified MBE/WBE will be counted towards MBE/WBE participation.

Should you have any questions regarding the new requirements, please contact Doris Roberson at 317-234-1266 or email her at droberso@ifa.in.gov.